Appendix

Transcript of Record in Two Volumes in the Supreme Court of the United States

October Term, 1955

No.

Cash Cole, et al.,
Petitioners,
vs.
Fairview Development, Inc., et al.,
Respondents.

VOLUME II.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

(Proceedings had in the United States Court of Appeals for the Ninth Circuit)

United States Court of Appeal
for the Ninth Circuit

Excerpt from Proceedings of Tuesday, September 6, 1955.

Before: Healy, Pope and Fee, Circuit Judges.

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Bailey E. Bell, counsel for the appellants, and by Mr. Walter Sczudlo, counsel for the appellees, and submitted to the Court for consideration and decision.

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Tuesday,
September 29, 1955.

Before: Healy, Pope and Fee, Circuit Judges.

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT

Ordered that the typewritten per curiam opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of the Court in accordance with the opinion rendered.

United States Court of Appeals
for the Ninth Circuit

Cash Cole, et al., Appellants, vs. Fairview Development, Inc., et al., Appellees.	No. 14,424 Sep. 29, 1955

Appeal from the United States District Court for the District of Alaska, Fourth Division

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OPINION

Before: Healy, Pope, and Fee, Circuit Judges

Per Curiam

This litigation was begun against appellants as a stockholders' suit. The principal defendant was appellant Cole, the others joined being more or less nominal parties. Subsequent to the commencement of the trial a written stipulation was entered into settling all claims of the parties, and a final judgment approving the settlement was entered by the trial court. Able and reputable counsel in charge of appellants' defense participated in the negotiations and in the making of the compromise. The record indicates that these counsel kept appellant Cole and his family advised of the course of the negotiations and of the result.

Some three months after entry of the judgment appellants, through other counsel employed by Cole,

moved under Rule 60(b) of the Federal Rules to set aside the compromise stipulation and to vacate the judgment. Most of the grounds set out in the Rule were incorporated in the motion plus additional grounds asserting the mental incapacity of appellant Cole and the alleged confiscatory nature of the settlement. Affidavits were filed contemporaneously with and in support of the motion, and there was a counter-showing by affidavits interposed on the part of appellees. Oral argument was had, the motion was taken under advisement, and was subsequently denied by the court. This appeal followed.

The original suit presented a complicated factual situation. No useful purpose would be served by discussion of the facts or the alleged merits of the appeal. Under the Rule a refusal to vacate is within the discretion of the trial court and may be reversed only for abuse of that discretion. Certainly, considering the showing pro and con here, no abuse of discretion is discernible, nor was error committed in the procedure followed. The trial court's ruling on the motion is accordingly affirmed.

(Endorsed:) Per Curiam Opinion. Filed Sep. 29, 1955. Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

No. 14,424

Cash Cole, et al.,
Appellants,

vs.

Fairview Development, Inc., et al.,
Appellees.

JUDGMENT

Appeal from the United States District Court for the District of Alaska, Fourth Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Alaska, Fourth Division, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

(Endorsed) Judgment Filed and Entered: September 29, 1955. Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Wednesday,
December 7, 1955

Before: Healy, Pope and Fee, Circuit Judges.

ORDER DENYING PETITION FOR REHEARING

On consideration thereof, and by direction of the Court, It Is Ordered that the petition of Appellants, filed October 27, 1955, and within time allowed therefor by rule of Court for a rehearing of the above cause be, and hereby is denied.